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NORTHERN DISTRICT OF CALIFORNIA

8 Attorneys for Plaintiff  
9 ALIGN TECHNOLOGY, INC.

10 ALIGN TECHNOLOGY, INC.,

11 Plaintiff,

12 vs.

13 QUAT TRAN, aka DR. QUAT TRAN and  
14 dba BRACES 2000; and DOES 1 through  
15 10,

16 Defendants.

C 06 2740

17 CASE NO.

18 COMPLAINT FOR:

- 19 (1) TRADEMARK INFRINGEMENT;  
20 (2) FEDERAL STATUTORY UNFAIR  
21 COMPETITION;  
22 (3) CALIFORNIA STATUTORY UNFAIR  
23 COMPETITION;  
24 (4) CALIFORNIA FALSE ADVERTISING;  
25 AND  
26 (5) COMMON-LAW UNFAIR  
27 COMPETITION

28 DEMAND FOR JURY TRIAL

## **JURISDICTION**

1. This action arises under 15 U.S.C. § 1051 *et seq.*, popularly known as the “Lanham Act.” This Court has jurisdiction over the subject matter of this action pursuant to 15 U.S.C. § 1121, 28 U.S.C. §§ 1331 and 1338 (including original jurisdiction over the state-law claims pursuant to 28 U.S.C. § 1338(b) because they are claims of unfair competition joined with substantial and related claims under the trademark laws), and the doctrine of supplemental jurisdiction.

## PARTIES

2. Plaintiff Align Technology, Inc. (“Align”) is a Delaware corporation with its principal place of business in Santa Clara, California.

3. Align is informed and believes, and on that basis alleges, that defendant Quat Tran, aka Dr. Quat Tran and dba Braces 2000, is an individual practicing as an orthodontist, with a principal place of business at 1695 Alum Rock Avenue, Suite 6, San Jose, California 95116 (“Tran”).

4. Align is ignorant as to the true names and capacities, whether individual, corporate, associate or otherwise, of the defendants sued herein as Does 1 through 10, and therefore sues such defendants by such fictitious names. Align is informed and believes, and on that basis alleges, that each of the Doe defendants is legally responsible in some manner for the wrongful conduct alleged herein. Align will amend this Complaint to allege the Doe defendants' true names and capacities when and if they are ascertained.

5. Align is informed and believes, and on that basis alleges, that except where otherwise alleged, each of the defendants is, and at all relevant times herein mentioned was, the

1 agent, partner, joint venturer, servant, and/or co-conspirator of each of the other defendants, and  
2 is, and at all relevant times herein mentioned was, in performing and failing to perform acts and  
3 conduct hereinafter alleged, acting within the course and scope and purpose of such agency,  
4 partnership, joint venture and/or conspiracy. Align is further informed and believes, and on that  
5 basis alleges, that the acts and conduct of each of the defendants were known to, and authorized  
6 and ratified by, the remaining defendants, and that each of the defendants is legally responsible  
7 for the conduct and damages herein alleged.

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9

#### VENUE

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11 6. Venue is proper in the Northern District of California pursuant to 28 U.S.C.  
12 § 1391(b) in that a substantial part of the events and omissions giving rise to the claim occurred in  
13 this District. Additionally, defendants reside in this District in that they maintain an office in this  
14 District and transacted business in this District during the relevant period. The actions, damages  
15 and other facts forming the basis of Align's claims occurred in Santa Clara and possibly other  
16 counties of the San Francisco Bay Area, which are within the Northern District of California.

17

18

#### INTRADISTRICT ASSIGNMENT

19

20 7. Pursuant to Civil Local Rules 3-5(b) and 3-2(c)-(e) and General Order 44,  
21 venue for this "Intellectual Property" matter is proper in any division of this district and shall be  
22 "randomly assigned to any Judge of this Court, and shall not be reassigned on the basis of intra-  
23 district venue." General Order 44, paragraph 5.

24

25

#### FACTS

26

##### **The Invisalign System**

27

28 8. Align designs, develops, manufactures and markets high technology  
orthodontic products. Align's core product is the INVISALIGN system, a proprietary method for

1 treating crooked and misaligned teeth. The INVISALIGN system consists of a series of clear,  
2 removable devices that fit over a patient's teeth and gently and incrementally move the teeth into  
3 a desired final position. The INVISALIGN system uses cutting-edge, three-dimensional  
4 computer scanning and graphics to design and manufacture these customized orthodontic devices.  
5 Align's software application allows dental professionals to simulate the treatment process in three  
6 dimensions, providing a novel diagnosis and treatment planning process.

7

8           9. In the INVISALIGN system, an impression is taken of the patient's mouth  
9 and teeth in their present position. A three-dimensional computer-generated image of the  
10 patient's teeth is created by Align. Based on the dentist or orthodontist's prescription and the  
11 digital model, Align uses its proprietary software to design a series of tooth alignment devices  
12 (similar to a thin clear plastic mouth guard) which are used to gradually and incrementally adjust  
13 and move specific teeth. Once the dentist approves the treatment plan, the complete set of the  
14 patient's aligners are then manufactured by Align and provided to the dentist or orthodontist.  
15 Approximately every two weeks a new aligner is worn by the patient, thus moving the teeth  
16 toward the desired final outcome. Prior to the commencement of treatment, the patient is  
17 typically provided with written information concerning the INVISALIGN system by the dentist  
18 or orthodontist and usually signs a treatment consent form (typically provided to the dentist or  
19 orthodontist by Align) that specifies INVISALIGN as the brand of orthodontic aligners and  
20 services to be used.

21

22           10. The INVISALIGN system revolutionized orthodontics when it was  
23 introduced in 1998. Since then, Align has remained the market leader in invisible orthodontics  
24 through significant research and development expenditures and constant refinement and  
25 improvement of its system. In the eight years since its introduction, hundreds of thousands of  
26 patients (the vast majority of all patients treated by invisible orthodontics) have been successfully  
27 treated with the INVISALIGN system.

28

## The Elements of Align's Success in the Marketplace

11. A principal reason for Align's success in the marketplace is the trust that dentists, orthodontists and patients put in Align's INVISALIGN products and services. First and foremost, Align is the preeminent company, and INVISALIGN is the preeminent brand, in the field of invisible orthodontics. No other company has Align's successful track record, and demonstrated outcomes in hundreds of thousands of cases. Align's products and technology are proven, and Align has developed a large following of outstanding dentists and orthodontists who have reputations for extensive experience with Align's INVISALIGN products and services.

12. One of the services provided by Align and one of the reasons for the patient trust that accounts for the INVISALIGN system's success is Align's continuing dedication to recruitment, training and certification of orthodontists and dentists in Align's network of certified providers. Each year, Align provides numerous clinical education and training programs, which include certification classes, conference calls, seminars and workshops. These events provide dentists and orthodontists with a better understanding of INVISALIGN products and services and their applicability to individual patients. Since 1999, Align has certified thousands of orthodontists and dentists annually, during multi-day, intensive training sessions, to use the INVISALIGN system. As a result of these efforts, over thirty-thousand dentists and orthodontists have been recruited into, trained at, and certified by Align's training and certification program. Align also maintains an online clinical education center that augments its training workshops and conducts conference calls and seminars enabling INVISALIGN-trained doctors to obtain continuing education credits and access a full range of case studies and best practices.

13. Align's extensive and innovative marketing campaign has been another important factor in Align's success. Align has developed distinctive and innovative trademarks, and delivered them to end users through targeted television, radio, print, point-of-sale, and internet advertising. Align's marketing tools include INVISALIGN-branded video displays,

1 brochures, banners, posters, mounted displays of the INVISALIGN product, and "goody bags"  
2 for patients to use to carry products home from the dentist's or orthodontist's office. All of these  
3 items prominently display the INVISALIGN trademark. Align's efforts have resulted in  
4 significant goodwill associated with Align's identity and trademark portfolio, and with Align's  
5 successful and valuable branding of the INVISALIGN system.

6

7       14. Align adopted the mark INVISALIGN and used it in interstate commerce  
8 for orthodontic aligners. On May 3, 1999, Align filed an application for registration of the mark  
9 in the United States Patent and Trademark Office. On November 28, 2000, the mark  
10 INVISALIGN was registered on the Principal Register under Reg. No. 2,409,473 in the United  
11 States Patent and Trademark Office for dental apparatus and orthodontic appliances such as  
12 orthodontic aligners. The registration is in force, and the INVISALIGN mark is now  
13 uncontested pursuant to the terms of 15 U.S.C. §1065.

14

15       15. Continuously since on or about September, 1999, Align has used the mark  
16 INVISALIGN to identify its orthodontic aligners and to distinguish them from those made and  
17 sold by others, by, among other things, prominently displaying the mark INVISALIGN on the  
18 containers for the goods and related materials, displays and marketing collateral. In addition,  
19 Align provides INVISALIGN-branded promotional and point-of-sale materials to dentists and  
20 orthodontists that are often prominently displayed on office fronts, patient waiting rooms, and  
21 advertising. Align has also engaged in significant, national television and print media advertising  
22 for its orthodontic aligners using the INVISALIGN mark.

23

24       16. Since on or about November, 2000, Align has provided notice that its  
25 INVISALIGN mark is registered in the U.S. Patent and Trademark Office by displaying the mark  
26 as used with the letter R enclosed within a circle (®).

27

28

1                   **Tran Passes Off Counterfeit Products as the INVISALIGN System**

2                 17. Align is informed and believes, and on that basis alleges, that Tran has  
 3 actively misled patients into believing that they were being treated with the genuine  
 4 INVISALIGN system when, in fact, Tran provided them with counterfeit aligners. In fact, one of  
 5 Tran's patients, named Alexander Kim, has filed a complaint against Tran in the Superior Court  
 6 of California, Santa Clara County, alleging that Tran contracted with Mr. Kim to supply  
 7 INVISALIGN aligners, but instead supplied non-genuine aligners that were not manufactured or  
 8 supplied by Align.

9

10               18. Align is informed and believes, and on that basis alleges, that Tran's  
 11 patients specifically request the INVISALIGN system from him, and that Tran instead treats the  
 12 patients with a non-Align product, without informing the patients of the substitution or obtaining  
 13 their authorization or consent. The non-Align product supplied by Tran is a clear, plastic aligner  
 14 that is manufactured and distributed by defendants. To the average customer, the non-Align  
 15 product supplied by Tran is not distinguishable from INVISALIGN aligners. Patients who  
 16 unknowingly received the counterfeit product have discussed only INVISALIGN treatment with  
 17 Tran, and have not discussed with Tran any other orthodontic systems or devices. The patients  
 18 sign a contract for services with Tran indicating that they will receive treatment using  
 19 INVISALIGN aligners and services. Patients are provided with written information concerning  
 20 treatment with the INVISALIGN system. Tran then provides the patients with counterfeit,  
 21 substitute aligners that yield a greater profit margin for Tran.

22

23               19. When patients have learned of Tran's unethical and unlawful product  
 24 substitution, they have ceased treatment with Tran.

25

26               20. Align is informed and believes, and on that basis alleges, that defendants  
 27 (including Tran) manufacture and distribute the counterfeit aligners supplied by Tran.

28

21. Tran's conduct in treating patients with a counterfeit product without their knowledge or consent violates several canons of the American Association of Orthodontists ("AAO") Principles of Ethics and Code of Professional Conduct, as well as the California Dental Association's ("CDA") Code of Ethics.

22. In pertinent part, the AAO Principles of Ethics and Code of Professional Conduct provides (emphasis added):

I. Members shall be dedicated to providing the highest quality orthodontic care to their patients within the bounds of the clinical aspects of the patient's condition, and with due consideration being given to the needs and desires of the patient. . . . C. **Members shall make treatment decisions** and render all related opinions and recommendations based on the best interest of the patient **without regard to a member's direct or indirect financial or beneficial interest in a product or service, or direct or indirect relationship with the manufacturer or supplier of such product or service.**

**IV. Members shall be honest with patients, colleagues and third parties. . . . D. Members shall not misrepresent the care being rendered to a patient.**

23. In pertinent part, the CDA's Code of Ethics provides:

It is unethical to mislead a patient or misrepresent in any material respect either directly or indirectly the skills, training, identity, services, or fees of the dentist who performs a procedure. . . . Dentists shall not represent the care being rendered to their patients or the fees being charged for providing such care in a false or misleading manner. . . . Dentists shall fully explain proposed treatment, reasonable alternatives, and the risks of not performing treatment. Treatment should be explained in a manner that allows patients to be involved in decisions affecting their oral health.

## **FIRST CAUSE OF ACTION**

(Federal Trademark Infringement – 15 U.S.C. § 1114(1)(a))

**(Against All Defendants)**

1           25. Defendants' unauthorized uses of Align's mark INVISALIGN in  
 2 commerce in connection with non-INVISALIGN aligners, and in connection with the  
 3 manufacturing, distributing, offering for sale, and advertising of goods and services, constitute the  
 4 use of a colorable imitation of Align's INVISALIGN orthodontic aligners that has caused, and is  
 5 likely to cause, confusion or mistake or deception. Defendants thus infringe Align's trademark  
 6 rights in the federally registered mark INVISALIGN in violation of 15 U.S.C. § 1114(1)(a).

7

8           26. Defendants' actions as set forth above injure Align and the public in many  
 9 ways, including by divesting Align of control over its reputation, by diverting sales, by  
 10 undermining confidence in the integrity of Align's product offering and in the Align provider  
 11 network, and by giving defendants an unjust competitive advantage by passing their products and  
 12 services off as Align's. Align is therefore entitled to an injunction and damages including  
 13 defendants' unjust profits, as set forth below.

14

15           27. Align is informed and believes, and on that basis alleges, that defendants'  
 16 use of the INVISALIGN mark on or in connection with substantially similar goods and services is  
 17 part of a deliberate plan to trade on the valuable goodwill established with the INVISALIGN  
 18 mark. With knowledge of Align's ownership of the mark, and with the deliberate intention to  
 19 unfairly benefit from the goodwill generated thereby, defendants have acted unlawfully and in  
 20 willful disregard of Align's rights, making this an exceptional case within the meaning of  
 21 15 U.S.C. § 1117(a) and entitling Align to treble damages and treble defendants' unjust profits, as  
 22 well as an award of attorneys' fees pursuant to 15 U.S.C. § 1117(b).

23

24           28. Align is informed and believes, and on that basis alleges, that defendants'  
 25 use of the INVISALIGN mark on or in connection with substantially similar goods or services  
 26 constitutes intentional use in commerce of a counterfeit mark pursuant to 15 U.S.C. §1116(d),  
 27 warranting injunctive relief, including an *ex parte* seizure order pursuant to 15 U.S.C.  
 28 §1116(d)(1)(A). Defendants undertook use of the counterfeit mark knowing that it was a

1 counterfeit, and did so in connection with the manufacture, sale, offering for sale, or distribution  
 2 of goods or services. Further, defendants' use of the counterfeit mark is likely to cause confusion,  
 3 mistake, or to deceive. This conduct warrants an award of the special civil monetary remedies  
 4 against counterfeiting pursuant to 15 U.S.C. §1117(b).

5  
**SECOND CAUSE OF ACTION**

6  
**(Federal Statutory Unfair Competition – 15 U.S.C. § 1125(a))**

7  
**(Against All Defendants)**

8  
 29. Align realleges and reincorporates by reference the allegations of  
 9 paragraphs 1 through 28 of this Complaint.

10  
 30. By the acts set forth fully above, defendants have used in commerce the  
 11 word, term, and name INVISALIGN, and have used false designations of origin and false and  
 12 misleading descriptions and representations of fact, in connection with defendants' goods,  
 13 services, and commercial activities. These uses, false designations, and false representations are  
 14 likely to cause confusion, or to cause mistake, or to deceive the public, especially dental and  
 15 orthodontic patients, as to the affiliation, connection, or association of defendants' infringing  
 16 goods on the one hand and Align on the other hand, and as to the origin, sponsorship, or approval  
 17 of defendants' goods, services, or commercial activities of defendants, all in violation of Section  
 18 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

19  
 31. By the acts set forth above, defendants have also misrepresented the nature,  
 20 characteristics and qualities of his goods, services and commercial activities, in violation of  
 21 Section 43(a) of the Lanham Act.

22  
 32. Defendants' unlawful conduct constituting trademark infringement and  
 23 unfair competition under 15 U.S.C. § 1125(a) consists of "palming off" or "passing off" their  
 24 infringing products as the INVISALIGN system, by deliberately misleading patients as to the  
 25  
 26  
 27  
 28  
 9-

1 provider and manufacturer of the aligner product Tran is using to treat patients. Defendants have  
2 caused, and will continue to cause, the public to mistakenly believe that their orthodontic aligners  
3 originate from, are sponsored by, or are in some way associated with Align. This conduct  
4 constitutes false designations of origin or false descriptions or representations, and is likely to  
5 cause the mark to lose its significance as a designator of origin.

6

7           33. Align is informed and believes, and on that basis alleges, that defendants  
8 intend to "palm off" their product as the genuine INVISALIGN system. Defendants deliberately  
9 lead Tran's patients to believe they are being treated with (and charges his patients for the full  
10 price of) the INVISALIGN system when, in fact, Tran treats these patients with non-genuine  
11 aligners. Thus, defendants have willfully infringed and are continuing to infringe on Align's  
12 rights in violation of 15 U.S.C. § 1125(a).

13

14           34. Defendants' actions have caused and will continue to cause significant  
15 monetary and nonmonetary damages to Align. Defendants' wrongful conduct, unless and until  
16 enjoined and restrained by order of this Court, will cause great and irreparable injury to Align's  
17 business. Align is entitled to an injunction and damages as set forth below.

18

19           35. Defendants' actions as described above were willful and with full intent to  
20 cause confusion, mistake and deception, making this an exceptional case within the meaning of  
21 15 U.S.C. § 1117(a) and entitling Align to treble damages and treble defendants' unjust profits as  
22 well as an award of attorneys' fees.

23

24           36. Align has no adequate remedy at law for the injuries currently being  
25 suffered and threatened in that defendants will continue to "palm off" non-genuine products as  
26 those of Align, rendering any judgment ineffectual. Align also has no adequate remedy at law  
27 because monetary compensation will not afford adequate relief to Align and because it will be

28

1 extremely difficult to ascertain the amount of compensation that would afford such relief.  
2 Therefore, Align is entitled to injunctive relief as provided by 15 U.S.C. § 1116(a).  
3

4 **THIRD CAUSE OF ACTION**

5 **(Unfair Competition in Violation of Cal. Bus. & Prof. Code §§ 17200 *et seq.*)**  
6 **(Against All Defendants)**

7 37. Align realleges and reincorporates by reference the allegations of  
8 paragraphs 1 through 36 of this Complaint.  
9

10 38. Sections 17200 *et seq.* of the California Business and Professions Code  
11 prohibits any “unlawful, unfair or fraudulent business act or practice.”  
12

13 39. Align is informed and believes, and on that basis alleges, that defendants,  
14 by conduct as set forth fully in the paragraphs above, have engaged in unlawful conduct that  
15 constitutes unfair competition. This conduct violates 15 U.S.C. §§ 1114 and 1125 and constitutes  
16 unfair competition under Section 17200 of the California Business and Professions Code. Such  
17 conduct includes defendants’ unlawful acts in “palming off” non-Align products as the  
18 INVISALIGN system by substituting, without authorization, non-Align products for the  
19 INVISALIGN system that patients specifically request and deliberately misleading patients into  
20 believing they are being treated with genuine INVISALIGN products and services.  
21

22 40. Align is informed and believes, and on that basis alleges, that defendants,  
23 by the conduct set forth above, have engaged in fraudulent conduct that constitutes unfair  
24 competition. This conduct includes the fraudulent acts or practice of misrepresenting the source  
25 of the orthodontic aligners used in Tran’s orthodontic treatments and the “palming off” of their  
26 own product and services as the genuine INVISALIGN system by substituting, without  
27 authorization, non-Align products and services for the INVISALIGN system that patients  
28

1 specifically request, and deliberately misleading patients into believing they are being treated  
2 with genuine INVISALIGN products and services.

3

4 41. Defendants' acts in violation of Sections 17200 of the California Business  
5 and Professions Code, including wrongful "palming off" of their product as the INVISALIGN  
6 system and other acts, have caused Align financial injury including the loss of money and will,  
7 unless enjoined, cause Align further financial injury and other immediate and irreparable harm.  
8 Defendants are using Align's goodwill and valuable marketing materials to divert patients from  
9 Align and its INVISALIGN system to a non-genuine product. Align is informed and believes,  
10 and on that basis alleges, that defendants continue to solicit and divert the business and goodwill  
11 of Align's consumers with the intent that such consumers will stop requesting and purchasing the  
12 INVISALIGN system and begin receiving products from another source.

13

14 42. By virtue of defendants' unlawful and fraudulent acts and omissions,  
15 defendants have engaged in unfair competition within the meaning of the California Business and  
16 Professions Code Section 17200, thereby entitling Align to injunctive and restitutionary relief as  
17 provided by California Business and Professions Code Section 17203. Align has no adequate  
18 remedy at law to compel defendants to cease their wrongful solicitation and diversion of Align's  
19 consumers. Unless the Court grants an injunction, Align will be forced to commence a  
20 multiplicity of actions, one each time defendants wrongfully solicit, divert, or otherwise interfere  
21 with Align's consumers or Align's goodwill. Align's damages are irreparable because it would  
22 be extremely difficult to ascertain the amount of compensation that would afford Align adequate  
23 relief if defendants are not enjoined at this time.

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## **FOURTH CAUSE OF ACTION**

**(False Advertising in Violation of Cal. Bus. & Prof. Code § 17500)**

**(Against Defendant Tran Only)**

43. Align realleges and reincorporates by reference paragraphs 1 through 42 of this Complaint.

44. Tran has had, and continues to have, an intent to perform professional services and to dispose of personal property in connection with Tran's orthodontic practice, including but not limited to the provision of dental and orthodontic services and the dispensing of orthodontic aligners to patients.

45. Tran induces the public to enter into obligations relating to professional services and the dispensing of aligners, including but not limited to payment obligations relating to orthodontic treatment and dispensing of orthodontic aligners. Tran induces the public to enter into the obligations by advertising the availability of INVISALIGN orthodontic aligners and INVISALIGN-based orthodontic services to Tran's patients on Tran's premises; by inscribing the INVISALIGN mark on treatment plans, consent forms, and contracts with patients; and by making oral statements specifying INVISALIGN orthodontic aligners and INVISALIGN-based orthodontic treatment services in discussing, recommending, and soliciting consent by patients for the acquisition of INVISALIGN orthodontic aligners and the purchase of INVISALIGN-based orthodontic services.

46. By the actions described above, Tran makes, disseminates, and causes to be disseminated statements concerning the personal property, concerning the professional services, and concerning circumstances or matters of fact connected with the proposed performance of services or the proposed dispensing of orthodontic aligners. Among other things, Tran states that Tran will furnish and is furnishing INVISALIGN orthodontic aligners and INVISALIGN-based orthodontic treatment services to patients.

1           47. Tran's statements as described above are untrue and misleading. Tran  
2 knows, and by the exercise of reasonable care should know, that the statements described above  
3 are untrue and misleading. Tran knows that the orthodontic aligners Tran will furnish and is  
4 furnishing to patients are not INVISALIGN aligners, and that the services Tran will furnish and is  
5 furnishing are not INVISALIGN-based services.

6

7           48. Tran has made, disseminated, or caused to be made or disseminated those  
8 untrue and misleading statements as part of a plan or scheme with the intent not to sell that  
9 personal property or those professional services as so advertised.

10

11           49. Tran's acts as described above constitute false advertising in violation of  
12 Section 17500 of the California Business & Professions Code.

13

14           50. Plaintiff Align has suffered injury in fact and has lost money and property  
15 as a result of Tran's violation described above.

16

17           51. Plaintiff Align is entitled, pursuant to Cal. Bus. & Prof. Code § 17535, to  
18 an injunction against Tran as well as restitution by Tran and disgorgement of Tran's unjust gains  
19 arising from the violation as described herein.

20

21           **FIFTH CAUSE OF ACTION**

22           **(Common Law Unfair Competition)**

23           **(Against All Defendants)**

24           52. Align realleges and reincorporates by reference the allegations of  
25 paragraphs 1 through 51 of this Complaint.

26

27           53. Align is informed and believes, and on that basis alleges, that defendants,  
28 by their conduct set forth in the paragraphs above, have engaged in unlawful conduct that

1 constitutes unfair competition under the common law of the State of California. Specifically,  
2 defendants "palm off" non-genuine and/or counterfeit product as the INVISALIGN system by  
3 manufacturing, distributing, and substituting, without authorization, non-genuine and/or  
4 counterfeit product for the INVISALIGN system that Tran's patients specifically request and  
5 which Tran deliberately misleads his patients to believing he is using in their treatment.

6

7           54. Align has no adequate remedy at law to compel defendants to cease their  
8 wrongful solicitation and diversion of Align's consumers. Unless the Court grants an injunction,  
9 Align will be forced to commence a multiplicity of actions, one each time defendants wrongfully  
10 solicit, divert, or otherwise interfere with Align's business or Align's goodwill. Align's damages  
11 are irreparable because it would be extremely difficult to ascertain the amount of compensation  
12 that would afford Align adequate relief if defendants are not enjoined at this time.

13

14           55. Align is informed and believes, and on that basis alleges, that defendants'  
15 wrongful acts were willful, oppressive and malicious, in that defendants have unfairly competed  
16 with Align with the deliberate intent to injure Align's business. Align is therefore entitled to the  
17 recovery of actual damages as well as exemplary damages to be determined at the time of trial in  
18 a sum sufficient to punish defendants and to set an example to deter such conduct in the future.

19

20           **PRAAYER FOR RELIEF**

21

22           WHEREFORE, Align prays for judgment and relief as follows:

23           1. For the issuance of preliminary and permanent injunctive relief enjoining  
24 defendants and their agents and representatives, and all persons acting in concert or participating  
25 with them from:

26               a. misrepresenting their products and services as those of Align's;

27

28               b. manufacturing, distributing, or selling their counterfeit products;

- 1                   c. displaying the INVISALIGN mark or other Align trademarks anywhere in  
2                   the interior or on the exterior of Tran's office;
  
3                   d. displaying or otherwise utilizing Align marketing collateral, patient  
4                   consent forms, patient instruction forms, or any other Align-provided  
5                   documents or materials;  
6                   e. using non-genuine products to treat patients who have requested treatment  
7                   with the INVISALIGN system without obtaining prior written consent  
8                   from the patients indicating that they are aware they will not be receiving  
9                   treatment with INVISALIGN system;  
10                  f. failing to notify all patients and prospective patients in writing that Tran is  
11                  no longer authorized to provide orthodontic treatment with the  
12                  INVISALIGN system; and  
13                  g. failing to notify, in writing, those patients who requested but did not  
14                  receive INVISALIGN, of Dr. Tran's conduct, as described herein.

19  
20                  2. For actual damages, including Align's lost profits and defendants' unjust  
21                  profits, according to proof at trial;

22  
23                  3. For an award of damages treble the amount of actual damages suffered by  
24                  Align;

25  
26                  4. For an award of statutory damages pursuant to 15 U.S.C. § 1117(c).

5. For an award of punitive and exemplary damages by reason of defendants' fraud and palming off;

6. For an award of attorneys' fees and costs incurred in this exceptional case;

**7. For costs of suit herein; and**

8. For such other and further relief as the Court deems appropriate.

DATED: April 20, 2006

PAUL, HASTINGS, JANOFSKY & WALKER LLP  
MARK E. MCKEEN  
PETER C. MEIER

By: Peter C. Meier  
PETER C. MEIER

**Attorneys for Plaintiff  
ALIGN TECHNOLOGY, INC.**

LEGAL\_US\_W # 70552561.1

**DEMAND FOR JURY TRIAL**

3 Plaintiff ALIGN TECHNOLOGY, INC., hereby requests a jury trial as provided  
4 by Rule 38(a) of the Federal Rules of Civil Procedure.

5 DATED: April 20, 2006

PAUL, HASTINGS, JANOFSKY & WALKER LLP  
MARK E. MCKEEN  
PETER C. MEIER

By: Peter C. Meier  
PETER C. MEIER

Attorneys for Plaintiff  
ALIGN TECHNOLOGY, INC.

1                   **CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

2  
3                   Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than  
4                   the named parties, there is no such interest to report.

5                   DATED: April 20, 2006

PAUL, HASTINGS, JANOFSKY & WALKER LLP  
MARK E. MCKEEN  
PETER C. MEIER

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7                   By: Peter Meier  
8                   PETER C. MEIER

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10                  Attorneys for Plaintiff  
11                  ALIGN TECHNOLOGY, INC.

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